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MAY 4, 2021

**BY E-FILE**

The Honorable Christopher J. Burke  
United States District Court of Delaware  
844 North King Street  
Wilmington, DE 19801

**REDACTED - PUBLIC VERSION**

Re: *Sysmex Corporation (“SCorp”) and Sysmex America, Inc. (“SAI”) (collectively, “Sysmex”) v. Beckman Coulter, Inc. (“BCI”),* C.A. No.: 19-1642-RGA-CJB

Dear Judge Burke:

I write on behalf of my client, BCI, in reply to Sysmex’s opposition to BCI’s motion for leave to amend its Answer and Counterclaims. Here, Sysmex ignores the allegations that form the crux of the Second Amended Answer and Counterclaims: (1) Mr. Tadashi Horie of the firm Brinks, Gilson, & Lione (“Brinks”) unlawfully used BCI’s source code and other confidential information to amend the claims of the Asserted Patents, and (2) Sysmex and Brinks failed to limit Mr. Horie’s access to such information. These allegations are based on information that BCI could not have learned before October 1, 2020, the deadline for amendments. The Court has good cause to grant leave, and Sysmex’s claims of undue delay and prejudice are meritless.

1. **BCI Has Met the Standard for Good Cause**

Good cause exists when the party seeking leave could not have uncovered the factual basis for its amendment until after the deadline has run. *See Int’l Constr. Prod. LLC v. Caterpillar Inc.*, 2018 WL 4611216, at \*2 (D. Del. Sept. 26, 2018) (good cause when “Plaintiff only discovered the evidence motivating its motion for leave to amend” after the deadline to amend had passed); *Callaway Golf Co. v. Dunlop Slazenger Grp. Ams., Inc.*, 295 F. Supp. 2d 430, 433 (D. Del. 2003) (good cause when the movant “was unaware of the basis” for its claims until after the deadline to amend). This is precisely the situation here.

BCI had no reason to suspect that Mr. Horie had misused source code information until October 27, 2020, when Sysmex requested that he help inspect BCI source code. (Ex. H.) Before October 27, Sysmex had concealed from BCI all facts relating to Mr. Horie’s improper conduct. Nothing in Sysmex’s prior communications with BCI suggested that Mr. Horie, with the permission of Sysmex and Brinks, had used BCI’s source code for prosecution. Nor was Mr. Horie’s misappropriation of source code revealed in past depositions or in documents produced by Sysmex. But on October 27, Sysmex showed no qualms about Mr. Horie inspecting BCI source code, thus raising BCI’s attention. Despite its diligence, BCI could not have pursued its new theories before the October 1 deadline because it was “unaware of the bas[es]” for these theories. *Callaway*, 295 F. Supp. 2d at 433. The Court should, therefore, permit leave.

Sysmex’s assertion that BCI was aware of all relevant information by August 2020 is incorrect. Sysmex cites to various documents such as file-wrappers and papers that BCI filed, but none of those materials indicate that Mr. Horie himself, with blessings from Sysmex and Brinks, would have accessed BCI’s source code for prosecution or even considered doing so.

**Young Conaway Stargatt & Taylor, LLP**

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**Young Conaway Stargatt & Taylor, LLP****2. BCI Did Not Unduly Delay in Amending Its Answer and Counterclaims**

On December 22, 2020, BCI informed Sysmex, through Brinks, of its intention to depose Mr. Horie because “[a] deposition is, perhaps, the best method of assessing [] credibility and discovering additional facts [].” *Am. Home Assur. Co. v. ZIM JAMAICA*, 418 F. Supp. 2d 537, 550 (S.D.N.Y. 2006). With fact discovery not ending until February 5, 2021, BCI had ample time. Yet, in the same breath as admonishing BCI about these “serious allegations,” Sysmex now suggests that BCI should have rushed to take the deposition of Mr. Horie and to seek leave to amend its answer. Indeed, this suggestion is belied by the fact that it took Brinks over a week to agree to accept a simple deposition subpoena on Mr. Horie’s behalf. (Ex. N.)

BCI brought this motion only after BCI gave Sysmex advance notice of its amendments *and* only after there was a clear impasse. *See Eleutian Tech., LLC v. Glob. Educ. Techs., LLC*, 2009 WL 10672362, at \*4 (D. Wyo. Jan. 23, 2009) (finding no undue delay when the movant “notified the parties of its intent to amend the complaint well in advance and negotiated in good faith with the parties for months until an impasse was reached”). In his deposition on January 15, 2021, Mr. Horie did not dispute that he had unfettered access to BCI’s source code production when prosecuting the Asserted Patents. (Ex. O.) Sysmex later produced a new privilege log, which only buttressed BCI’s theories on Mr. Horie’s involvement. (Ex. P.) In an effort to mitigate damage, BCI requested on February 1 that Sysmex implement remedial measures. (Ex. Q.) From February to March 2021, the parties met and conferred twice and exchanged emails about Mr. Horie’s misappropriation. During this time, Sysmex repeatedly denied impasse and asked BCI for explanations—which BCI provided—to consider the “serious allegations” that stemmed from Sysmex’s own misconduct. (Exs. K, Q.) To no avail, BCI repeatedly asked Sysmex to explain how Mr. Horie’s prosecution of the ’350 and ’351 patents did not violate the Illinois protective order, as they relate to the same accused and covered products as BCI’s ’012 patent, both involve the programming of hematology analyzers, and the same source code was inspected for both litigations. (Exs. R, S, T; Sysmex Ex. 9.) On March 9, BCI notified Sysmex of its intention to amend and reiterated supporting facts. (Ex. R.) At the meet-and-confer on March 24, the parties expressed clearly irreconcilable views. BCI promptly thereafter moved for leave to amend. In arguing that BCI should have pursued its claims in the Illinois case, Sysmex misinterprets BCI’s cited decisions and advances an argument that has no bearing on the undue delay inquiry.<sup>1</sup> Tellingly, none of Sysmex’s cited cases shows that undue delay exists if a party files amendments in one jurisdiction, but not in another. Moreover, judicial efficiency suggests this Court is the more appropriate forum, as it is where the ill-obtained patents are in litigation.<sup>2</sup>

**3. Sysmex Is Not Unduly Prejudiced**

Sysmex has not met its burden of showing undue prejudice. But for Sysmex’s concealment of the misappropriation, these claims would have been asserted earlier. Further, Sysmex fails to demonstrate that discovery into the relevant issues would not be limited. *See Rudy Fabiano Architects v. Glob. Fitness Holdings*, 2006 WL 8457428, at \*2 (D.N.J. Feb. 2, 2006) (“Some limited discovery does not amount to the unfair disadvantage that must exist to justify denial of amendment”). In fact, this Court has held that additional discovery is not a sufficient basis for denying leave. *Int’l Constr. Prod.*, 2018 WL 4611216, at \*4. Given that depositions are still pending and trial is not until February, 2022, Sysmex will not suffer any undue prejudice if leave is granted.

<sup>1</sup> Contrary to Sysmex’s view, this Court *can* adjudicate breach of contract claims. *See New Wave Innovations, Inc. v. Greenberg*, 2015 WL 5118130, at \*4 (S.D. Fla. Aug. 31, 2015) (examining protective order breach and dismissing claim only because damages not pleaded).

<sup>2</sup> In any event, BCI’s counterclaims will proceed either here or in a new, separate action.

**Young Conaway Stargatt & Taylor, LLP**

Respectfully,

*/s/ Melanie K. Sharp*

Melanie K. Sharp (No. 2501)

cc: Counsel of Record, Kelly F. Farnan, Esquire (by e-mail)

28076745.1

# EXHIBIT N

**From:** [Mallin, Robert](#)  
**To:** [Feng, Wallace](#)  
**Cc:** [Beckman-Sysmex-Litigation](#); [Sharp, Melanie](#); [Lee, Steven W.](#); [Chacko, Anupa](#); [Sobieraj, James](#); [James, Joshua](#); [Parrish, Daniel](#); ["farnan@rlf.com"](#); ["delcollo@rlf.com"](#); [BGLSysmex012Team](#)  
**Subject:** RE: Sysmex v. Beckman Coulter 19-1642 (RGA-CJB): Deposition  
**Date:** Tuesday, January 5, 2021 4:46:48 PM

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Wallace,

We confirm Mr. Sibley's deposition for Feb 1.

Mr. Horie is available for deposition on Friday, January 15, 2021. Please provide us with a subpoena with the new date and notice that the deposition will occur remotely.

Regards  
Robert

**Robert Mallin**

Intellectual Property Attorney  
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**Assistant:** Joan Schumaker  
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**From:** Feng, Wallace <wfeng@leydig.com>  
**Sent:** Monday, January 4, 2021 4:37 PM

**To:** Mallin, Robert <[rmallin@brinksgilson.com](mailto:rmallin@brinksgilson.com)>

**Cc:** Beckman-Sysmex-Litigation <[Beckman-Sysmex-Litigation@leydig.com](mailto:Beckman-Sysmex-Litigation@leydig.com)>; Sharp, Melanie <[msharp@ycst.com](mailto:msharp@ycst.com)>; Lee, Steven W. <[SLee@ycst.com](mailto:SLee@ycst.com)>; Chacko, Anupa <[ACHacko@ycst.com](mailto:ACHacko@ycst.com)>; Sobieraj, James <[jsobieraj@brinksgilson.com](mailto:jsobieraj@brinksgilson.com)>; James, Joshua <[jjames@brinksgilson.com](mailto:jjames@brinksgilson.com)>; Parrish, Daniel <[dparrish@brinksgilson.com](mailto:dparrish@brinksgilson.com)>; 'farnan@rlf.com' <[farnan@rlf.com](mailto:farnan@rlf.com)>; 'delcollo@rlf.com' <[delcollo@rlf.com](mailto:delcollo@rlf.com)>; BGLSysmex012Team <[BGLSysmex012Team@brinksgilson.com](mailto:BGLSysmex012Team@brinksgilson.com)>

**Subject:** [EXT] RE: Sysmex v. Beckman Coulter 19-1642 (RGA-CJB): Deposition

Robert,

Mr. Sibley is available on February 1. We are still working to confirm the deposition date for Mr. Blackwood.

Please provide us with Mr. Horie's availability as soon as possible.

Regards,

Wallace

**Wallace Feng | Leydig, Voit & Mayer, Ltd.**

Attorney at Law | Intellectual Property

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**From:** Mallin, Robert <[rmallin@brinksgilson.com](mailto:rmallin@brinksgilson.com)>

**Sent:** Monday, January 4, 2021 10:26 AM

**To:** Feng, Wallace <[wfeng@leydig.com](mailto:wfeng@leydig.com)>

**Cc:** Beckman-Sysmex-Litigation <[Beckman-Sysmex-Litigation@leydig.com](mailto:Beckman-Sysmex-Litigation@leydig.com)>; Sharp, Melanie <[msharp@ycst.com](mailto:msharp@ycst.com)>; Lee, Steven W. <[SLee@ycst.com](mailto:SLee@ycst.com)>; Chacko, Anupa <[ACHacko@ycst.com](mailto:ACHacko@ycst.com)>; Sobieraj, James <[jsobieraj@brinksgilson.com](mailto:jsobieraj@brinksgilson.com)>; James, Joshua <[jjames@brinksgilson.com](mailto:jjames@brinksgilson.com)>; Parrish, Daniel <[dparrish@brinksgilson.com](mailto:dparrish@brinksgilson.com)>; 'farnan@rlf.com' <[farnan@rlf.com](mailto:farnan@rlf.com)>; 'delcollo@rlf.com' <[delcollo@rlf.com](mailto:delcollo@rlf.com)>; BGLSysmex012Team <[BGLSysmex012Team@brinksgilson.com](mailto:BGLSysmex012Team@brinksgilson.com)>

**Subject:** RE: Sysmex v. Beckman Coulter 19-1642 (RGA-CJB): Deposition

Wallace

We are checking on Mr. Horie's availability.

In the meantime, we are still waiting for you to provide us with availability

dates for Mr. Sibley and Mr. Blackwood. Please provide us with proposed dates for those depositions by the close of business today.

Regards  
Robert

**Robert Mallin**

Intellectual Property Attorney

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**From:** Feng, Wallace <[wfeng@leydig.com](mailto:wfeng@leydig.com)>

**Sent:** Thursday, December 31, 2020 7:58 PM

**To:** Mallin, Robert <[rmallin@brinksgilson.com](mailto:rmallin@brinksgilson.com)>

**Cc:** Beckman-Sysmex-Litigation <[Beckman-Sysmex-Litigation@leydig.com](mailto:Beckman-Sysmex-Litigation@leydig.com)>; Sharp, Melanie <[msharp@ycst.com](mailto:msharp@ycst.com)>; Lee, Steven W. <[SLee@ycst.com](mailto:SLee@ycst.com)>; Chacko, Anupa <[AChacko@ycst.com](mailto:AChacko@ycst.com)>; Sobieraj, James <[jsobieraj@brinksgilson.com](mailto:jsobieraj@brinksgilson.com)>; James, Joshua <[jjames@brinksgilson.com](mailto:jjames@brinksgilson.com)>; Parrish, Daniel <[dparrish@brinksgilson.com](mailto:dparrish@brinksgilson.com)>; 'farnan@rlf.com' <[farnan@rlf.com](mailto:farnan@rlf.com)>; 'delcollo@rlf.com' <[delcollo@rlf.com](mailto:delcollo@rlf.com)>; BGLSysmex012Team <[BGLSysmex012Team@brinksgilson.com](mailto:BGLSysmex012Team@brinksgilson.com)>

**Subject:** [EXT] RE: Sysmex v. Beckman Coulter 19-1642 (RGA-CJB): Deposition

Robert,

We confirm that Mr. Horie's deposition will be conducted via remote means, similar to the manner for the depositions of Messrs. Grace and Dunbabin, and as we presently expect will likely be the case for all depositions in this litigation. This will be reflected in the subpoena.

Please confirm Mr. Horie's availability for January 13, or provide alternate dates when he can be made available.

Regards,

Wallace

**Wallace Feng | Leydig, Voit & Mayer, Ltd.**

Attorney at Law | Intellectual Property

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Tel: 312-616-5657

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**From:** Mallin, Robert <[rmallin@brinksgilson.com](mailto:rmallin@brinksgilson.com)>

**Sent:** Thursday, December 31, 2020 4:11 PM

**To:** Feng, Wallace <[wfeng@leydig.com](mailto:wfeng@leydig.com)>

**Cc:** Beckman-Sysmex-Litigation <[Beckman-Sysmex-Litigation@leydig.com](mailto:Beckman-Sysmex-Litigation@leydig.com)>; Sharp, Melanie <[msharp@ycst.com](mailto:msharp@ycst.com)>; Lee, Steven W. <[SLee@ycst.com](mailto:SLee@ycst.com)>; Chacko, Anupa <[ACHacko@ycst.com](mailto:ACHacko@ycst.com)>; Mallin, Robert <[rmallin@brinksgilson.com](mailto:rmallin@brinksgilson.com)>; Sobieraj, James <[jsobieraj@brinksgilson.com](mailto:jsobieraj@brinksgilson.com)>; James, Joshua <[jjames@brinksgilson.com](mailto:jjames@brinksgilson.com)>; Parrish, Daniel <[dparrish@brinksgilson.com](mailto:dparrish@brinksgilson.com)>; 'farnan@rlf.com' <[farnan@rlf.com](mailto:farnan@rlf.com)>; 'delcollo@rlf.com' <[delcollo@rlf.com](mailto:delcollo@rlf.com)>; BGLSysmex012Team <[BGLSysmex012Team@brinksgilson.com](mailto:BGLSysmex012Team@brinksgilson.com)>

**Subject:** RE: Sysmex v. Beckman Coulter 19-1642 (RGA-CJB): Deposition

Wallace

We are willing to accept service of a new subpoena that includes a mutually agreeable date for the deposition, and that specifically provides that the deposition will be conducted by remote means such as, for example, a web-based system such as how we accommodated BCI's request in relation to Mr. Grace's and Mr. Dunbabin's depositions.

Regards

Robert

**Robert Mallin**



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**Sent:** Tuesday, December 29, 2020 3:58 PM  
**To:** Mallin, Robert <[rmallin@brinksgilson.com](mailto:rmallin@brinksgilson.com)>; Sobieraj, James <[jsobieraj@brinksgilson.com](mailto:jsobieraj@brinksgilson.com)>; James, Joshua <[jjames@brinksgilson.com](mailto:jjames@brinksgilson.com)>; Parrish, Daniel <[dparrish@brinksgilson.com](mailto:dparrish@brinksgilson.com)>; 'farnan@rlf.com' <[farnan@rlf.com](mailto:farnan@rlf.com)>; 'delcollo@rlf.com' <[delcollo@rlf.com](mailto:delcollo@rlf.com)>; BGLSysmex012Team <[BGLSysmex012Team@brinksgilson.com](mailto:BGLSysmex012Team@brinksgilson.com)>  
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**Subject:** [EXT] RE: Sysmex v. Beckman Coulter 19-1642 (RGA-CJB): Deposition

Robert,

Attached is a draft of the subpoena for review. Please confirm whether you will accept service of the subpoena on behalf of Mr. Horie by 6:00 pm today.

Regards,

Wallace

**Wallace Feng | Leydig, Voit & Mayer, Ltd.**  
Attorney at Law | Intellectual Property

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**From:** Mallin, Robert <[rmallin@brinksgilson.com](mailto:rmallin@brinksgilson.com)>

**Sent:** Wednesday, December 23, 2020 1:16 PM

**To:** Feng, Wallace <[wfeng@leydig.com](mailto:wfeng@leydig.com)>; Sobieraj, James <[jsobieraj@brinksgilson.com](mailto:jsobieraj@brinksgilson.com)>; James, Joshua <[jjames@brinksgilson.com](mailto:jjames@brinksgilson.com)>; Parrish, Daniel <[dparrish@brinksgilson.com](mailto:dparrish@brinksgilson.com)>; 'farnan@rlf.com' <[farnan@rlf.com](mailto:farnan@rlf.com)>; 'delcollo@rlf.com' <[delcollo@rlf.com](mailto:delcollo@rlf.com)>; BGLSysmex012Team <[BGLSysmex012Team@brinksgilson.com](mailto:BGLSysmex012Team@brinksgilson.com)>

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**Subject:** RE: Sysmex v. Beckman Coulter 19-1642 (RGA-CJB): Deposition

Wallace

Please send us the subpoena for review and we will get back to you.

Regards  
Robert

**Robert Mallin**

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**From:** Feng, Wallace <[wfeng@leydig.com](mailto:wfeng@leydig.com)>

**Sent:** Tuesday, December 22, 2020 12:56 PM

**To:** Sobieraj, James <[jsobieraj@brinksgilson.com](mailto:jsobieraj@brinksgilson.com)>; Mallin, Robert <[rmallin@brinksgilson.com](mailto:rmallin@brinksgilson.com)>; James, Joshua <[jjames@brinksgilson.com](mailto:jjames@brinksgilson.com)>; Parrish, Daniel <[dparrish@brinksgilson.com](mailto:dparrish@brinksgilson.com)>; 'farnan@rlf.com' <[farnan@rlf.com](mailto:farnan@rlf.com)>; 'delcollo@rlf.com' <[delcollo@rlf.com](mailto:delcollo@rlf.com)>; BGLSysmex012Team <[BGLSysmex012Team@brinksgilson.com](mailto:BGLSysmex012Team@brinksgilson.com)>

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**Subject:** [EXT] Sysmex v. Beckman Coulter 19-1642 (RGA-CJB): Deposition

**Caution - External Email**

Counsel,

BCI intends to depose Tadashi Horie in this case. Please confirm that Brinks Gilson & Lione will accept service of a subpoena on behalf of Mr. Horie.

Please respond by the close of business today.

Thank you,

Wallace

**Wallace Feng | Leydig, Voit & Mayer, Ltd.**

Attorney at Law | Intellectual Property

Two Prudential Plaza, Suite 4900 | Chicago, IL 60601-6745

Tel: 312-616-5657

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# EXHIBIT O

TADASHI HORIE  
Highly Confidential

January 15, 2021

Page 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

SYSMEX CORPORATION and

SYSMEX AMERICA, INC.,

Plaintiffs,

vs.

C.A. No.: 19-1642-RGA-CJB

BECKMAN COULTER, INC.,

Defendant.

\*\*\* HIGHLY CONFIDENTIAL\*\*\*

The Videotaped Deposition of TADASHI HORIE,

Appearing Remotely from Chicago, Illinois,

Commencing at 9:35 a.m.,

Friday, January 15, 2021,

Before Rebecca L. Russo, CSR-2759, RMR, CRR.

Appearing Remotely from Kent County, Michigan.

TADASHI HORIE  
Highly Confidential

January 15, 2021

<p style="text-align: right;">Page 2</p> <p>1 REMOTE APPEARANCES:</p> <p>2</p> <p>3 ROBERT S. MALLIN</p> <p>4 JAMES R. SOBIERAJ</p> <p>5 DAVID S. FLEMING</p> <p>6 Brinks Gilson &amp; Lione</p> <p>7 455 North Cityfront Plaza Drive</p> <p>8 NBC Tower - Suite 3600</p> <p>9 Chicago, Illinois 60611</p> <p>10 312.321.4200</p> <p>11 rmallin@brinksgilson.com</p> <p>12 jsobieraj@brinksgilson.com</p> <p>13 dfleming@brinksgilson.com</p> <p>14       Appearing on behalf of the Plaintiffs.</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1                                   TABLE OF CONTENTS</p> <p>2</p> <p>3 WITNESS                                   PAGE</p> <p>4 TADASHI HORIE</p> <p>5</p> <p>6 EXAMINATION BY MR. FEIGELSON                                   9</p> <p>7</p> <p>8                                   EXHIBITS</p> <p>9 EXHIBIT                                   PAGE</p> <p>10 (Exhibits remotely introduced and</p> <p>11       provided electronically to the reporter)</p> <p>12</p> <p>13 DEPOSITION EXHIBIT DDX-0026                                   31</p> <p>14       (Email from Nicole Kopinski dated</p> <p>15       08-05-2020)</p> <p>16 DEPOSITION EXHIBIT DDX-0027                                   35</p> <p>17       (Email from</p> <p>18       postmaster@brinkshofer.com dated</p> <p>19       08-05-2020)</p> <p>20 DEPOSITION EXHIBIT DDX-0028                                   51</p> <p>21       (US Patent Application Publication</p> <p>22       No. US 2017/0363651)</p> <p>23 DEPOSITION EXHIBIT DDX-0029                                   52</p> <p>24       (US Patent Application Publication</p> <p>25       No. US 2019/0285520)</p>
<p style="text-align: right;">Page 3</p> <p>1 AARON R. FEIGELSON</p> <p>2 WESLEY O. MUELLER</p> <p>3 Leydig Voit &amp; Mayer Ltd</p> <p>4 Two Prudential Plaza</p> <p>5 180 North Stetson Avenue</p> <p>6 Suite 4900</p> <p>7 Chicago, Illinois 60601</p> <p>8 312.616.5600</p> <p>9 afeigelson@leydig.com</p> <p>10 wmueller@leydig.com</p> <p>11       Appearing on behalf of the Defendants.</p> <p>12</p> <p>13</p> <p>14</p> <p>15 ALSO PRESENT:</p> <p>16 Travis Jewell - US Legal Support Video Technician</p> <p>17       (Appearing Remotely Via Zoom)</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1 DEPOSITION EXHIBIT DDX-0030                                   57</p> <p>2       (Email Chain Re Source Code</p> <p>3       Inspection)</p> <p>4 DEPOSITION EXHIBIT DDX-0031                                   62</p> <p>5       (US Patent No. 10,151,746)</p> <p>6 DEPOSITION EXHIBIT DDX-0032                                   68</p> <p>7       (File History for Patent No.</p> <p>8       10,151,746)</p> <p>9 DEPOSITION EXHIBIT DDX-0033                                   88</p> <p>10       (Technical Testing of a Beckman</p> <p>11       Coulter LH 750)</p> <p>12 DEPOSITION EXHIBIT DDX-0034                                   104</p> <p>13       (Sysmex Operator's Manual -</p> <p>14       Automated Hematology Analyzer</p> <p>15       XE-2100)</p> <p>16 DEPOSITION EXHIBIT DDX-0035                                   113</p> <p>17       (First Amended Answer and</p> <p>18       Counterclaims of Defendant Beckman</p> <p>19       Coulter, Inc.)</p> <p>20 DEPOSITION EXHIBIT DDX-0036                                   131</p> <p>21       (Sysmex Operator's Manual -</p> <p>22       Automated Hematology Analyzer</p> <p>23       XE-2100)</p> <p>24 DEPOSITION EXHIBIT DDX-0037                                   144</p> <p>25       (XE-Series Body Fluid Application)</p>

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<p style="text-align: right;">Page 6</p> <p>1 DEPOSITION EXHIBIT DDX-0038 151</p> <p>2 (Letter from Department of Health</p> <p>3 and Human Services)</p> <p>4 DEPOSITION EXHIBIT DDX-0039 155</p> <p>5 (Sysmex Automated Hematology</p> <p>6 Analyzer XT-200i/XT-1800i Instruction</p> <p>7 for Use (North America Edition)</p> <p>8 DEPOSITION EXHIBIT DDX-0040 162</p> <p>9 (XT-Series Body Fluid Application)</p> <p>10 DEPOSITION EXHIBIT DDX-0041 166</p> <p>11 (510(k) Summary of Safety and</p> <p>12 Effectiveness)</p> <p>13 DEPOSITION EXHIBIT DDX-0042 176</p> <p>14 (Sysmex Privilege Log)</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 8</p> <p>1 This is the remote video-recorded</p> <p>2 deposition of Tadashi Horie, being taken on Friday,</p> <p>3 January 15th, 2021. The time is now 1435 UTC. We are</p> <p>4 here in the matter of Sysmex versus Beckman Coulter.</p> <p>5 My name is Travis Jewell, remote video</p> <p>6 technician, on behalf of US Legal Support, located at</p> <p>7 200 West Jackson, Chicago, Illinois. I am not related</p> <p>8 to any party in this action, nor am I financially</p> <p>9 interested in the outcome.</p> <p>10 At this time, will the reporter on behalf</p> <p>11 of US Legal Support please enter the statement for</p> <p>12 remote proceedings into the record.</p> <p>13 COURT REPORTER: The attorneys</p> <p>14 participating in this deposition acknowledge that I am</p> <p>15 not physically present in the deposition room and that</p> <p>16 I will be reporting this deposition remotely. They</p> <p>17 further acknowledge that in lieu of an oath</p> <p>18 administered in person, the witness will verbally</p> <p>19 declare his testimony in this matter is under penalty</p> <p>20 of perjury.</p> <p>21 The parties and their counsel consent to</p> <p>22 this arrangement and waive any objections to this</p> <p>23 manner of reporting.</p> <p>24 Please indicate your agreement by stating</p> <p>25 your name and your agreement on the record.</p>
<p style="text-align: right;">Page 7</p> <p>1 Appearing Remotely from Chicago, Illinois</p> <p>2 Friday, January 15, 2021</p> <p>3 9:35 a.m.</p> <p>4</p> <p>5</p> <p>6</p> <p>7 VIDEO TECHNICIAN: We are now on the</p> <p>8 record. Participants should be aware that this</p> <p>9 proceeding is being recorded and, as such, all</p> <p>10 conversations held will be recorded unless there's a</p> <p>11 request and agreement to go off the record.</p> <p>12 Private conversations and/or</p> <p>13 attorney-client interactions should be held outside</p> <p>14 the presence of the remote interface.</p> <p>15 For the purpose of creating a witness-only</p> <p>16 video recording, the witness is being spotlighted on</p> <p>17 all the video screens while on speaker view. We ask</p> <p>18 that the witness not remove the spotlight setting</p> <p>19 during the deposition, as it may cause other</p> <p>20 participants to appear on the final video rather than</p> <p>21 just the witness.</p> <p>22 For anyone who doesn't want the witness's</p> <p>23 video to take up a large part of your screen, you may</p> <p>24 click the gallery view button in the upper right</p> <p>25 corner of the RemoteDepo interface.</p>	<p style="text-align: right;">Page 9</p> <p>1 MR. FEIGELSON: Aaron Feigelson, on behalf</p> <p>2 of Defendant Beckman Coulter. I agree.</p> <p>3 MR. MALLIN: Robert Mallin, on behalf of</p> <p>4 Plaintiff Sysmex Corporation and Sysmex America. We</p> <p>5 agree.</p> <p>6 TADASHI HORIE,</p> <p>7 was thereupon called as a witness herein, and after</p> <p>8 having first been duly sworn to testify to the truth,</p> <p>9 the whole truth and nothing but the truth, was</p> <p>10 examined and testified as follows:</p> <p>11 EXAMINATION</p> <p>12 BY MR. FEIGELSON:</p> <p>13 Q. Good morning, Mr. Horie.</p> <p>14 A. Hi, how are you?</p> <p>15 Q. I'm good. We'll try to keep this as painless as we</p> <p>16 can today.</p> <p>17 A. Okay.</p> <p>18 Q. Are you represented by an attorney today?</p> <p>19 A. Yes.</p> <p>20 Q. Okay, and who is that attorney?</p> <p>21 A. Robert Mallin, of Brinks Gilson, and David Fleming, of</p> <p>22 Brinks Gilson.</p> <p>23 Q. And you understand that you're under oath?</p> <p>24 A. Yes.</p> <p>25 Q. You understand that your oath is just as binding as if</p>

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<p style="text-align: right;">Page 26</p> <p>1 client, Sysmex, regarding either of these two</p> <p>2 litigations?</p> <p>3 MR. MALLIN: Objection, attorney-client</p> <p>4 communication -- seeks attorney-client communications</p> <p>5 and work product immunity, mental impressions.</p> <p>6 I'll instruct the witness not to answer.</p> <p>7 BY MR. FEIGELSON:</p> <p>8 Q. And you're following your attorney's instruction?</p> <p>9 A. Yes.</p> <p>10 Q. Mr. Horie, have you performed any analysis of the</p> <p>11 Beckman Coulter patents that's being asserted in the</p> <p>12 Illinois case?</p> <p>13 MR. MALLIN: Objection, seeks</p> <p>14 attorney-client communication and work product</p> <p>15 immunity, including mental impressions.</p> <p>16 I'll instruct the witness not to answer.</p> <p>17 BY MR. FEIGELSON:</p> <p>18 Q. You're not answering?</p> <p>19 A. No.</p> <p>20 Q. Have you performed any infringement analysis of</p> <p>21 Beckman Coulter's products?</p> <p>22 MR. MALLIN: Objection, seeks</p> <p>23 attorney-client communication and work product</p> <p>24 immunity, including mental impressions.</p> <p>25 I'll instruct the witness not to answer.</p>	<p style="text-align: right;">Page 28</p> <p>1 immunity, mental impressions.</p> <p>2 I'll instruct the witness not to answer.</p> <p>3 BY MR. FEIGELSON:</p> <p>4 Q. You also attend the deposition of Vijay Madiseti, is</p> <p>5 that right?</p> <p>6 A. Yes.</p> <p>7 Q. That was in Georgia, I believe, is that right?</p> <p>8 A. Yes.</p> <p>9 Q. And you also attended the deposition in Miami of</p> <p>10 Geraldo Garcia, is that correct?</p> <p>11 A. Yes.</p> <p>12 Q. And you attended the Markman hearing in the Illinois</p> <p>13 case via Zoom, is that right?</p> <p>14 A. So again, what's the definition of "attending"?</p> <p>15 Q. You were in the room.</p> <p>16 A. Doing nothing.</p> <p>17 Q. Correct.</p> <p>18 A. Yeah, right, yeah.</p> <p>19 Q. And also the Markman hearing in the Delaware case?</p> <p>20 MR. MALLIN: Objection, form.</p> <p>21 A. Yes, doing nothing.</p> <p>22 BY MR. FEIGELSON:</p> <p>23 Q. Well, you listened, correct?</p> <p>24 A. Listening, yes.</p> <p>25 Q. Did you help your team prepare for those hearings?</p>
<p style="text-align: right;">Page 27</p> <p>1 BY MR. FEIGELSON:</p> <p>2 Q. You're following your attorney's instruction?</p> <p>3 A. Yes.</p> <p>4 Q. Prior to the assertion of the Sysmex patents in the</p> <p>5 present case, did you participate in any pre-suit</p> <p>6 investigation?</p> <p>7 MR. MALLIN: Objection, seeks</p> <p>8 attorney-client communication and work product</p> <p>9 immunity, including mental impressions.</p> <p>10 I'll instruct the witness not to answer.</p> <p>11 BY MR. FEIGELSON:</p> <p>12 Q. You said before you've attended depositions for the</p> <p>13 Illinois case, is that correct?</p> <p>14 A. Yes.</p> <p>15 Q. You attended the deposition of Takaaki Nagai, is that</p> <p>16 right?</p> <p>17 A. Yes.</p> <p>18 Q. And Daigo Fukuma?</p> <p>19 A. Yes.</p> <p>20 Q. And Mr. Narisada's deposition you attended, as well?</p> <p>21 A. Yes.</p> <p>22 Q. And you helped prepare those witnesses in advance of</p> <p>23 their depositions?</p> <p>24 MR. MALLIN: Objection, seeks</p> <p>25 attorney-client communication and work product</p>	<p style="text-align: right;">Page 29</p> <p>1 MR. MALLIN: Objection, seeks</p> <p>2 attorney-client communication, work product immunity.</p> <p>3 I'll instruct the witness not to answer.</p> <p>4 BY MR. FEIGELSON:</p> <p>5 Q. Did you assist in the invalidity analysis or</p> <p>6 preparation of invalidity contentions in the Illinois</p> <p>7 case?</p> <p>8 MR. MALLIN: Objection, form. Objection,</p> <p>9 foundation. Objection, seeks attorney-client</p> <p>10 communications and work product immunity.</p> <p>11 I'll instruct the witness not to answer.</p> <p>12 BY MR. FEIGELSON:</p> <p>13 Q. You're following that instruction?</p> <p>14 A. Yes.</p> <p>15 Q. Did you assist in the infringement analysis or the</p> <p>16 preparation of infringement contentions in the</p> <p>17 Delaware case?</p> <p>18 MR. MALLIN: Objection, form. Objection,</p> <p>19 foundation. Objection, seeks attorney-client</p> <p>20 communications and work product immunity.</p> <p>21 I'll instruct the witness not to answer.</p> <p>22 BY MR. FEIGELSON:</p> <p>23 Q. You're following that instruction?</p> <p>24 A. Yes.</p> <p>25 Q. Have you inspected any Sysmex computer source code in</p>



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<p style="text-align: right;">Page 30</p> <p>1 relation to either the Illinois case or the Delaware</p> <p>2 case?</p> <p>3 MR. MALLIN: Hold on one second.</p> <p>4 Objection, attorney-client communication,</p> <p>5 work product immunity.</p> <p>6 I'll instruct the witness not to answer.</p> <p>7 BY MR. FEIGELSON:</p> <p>8 Q. And you're following that instruction?</p> <p>9 A. Yes.</p> <p>10 Q. Have you inspected any Beckman Coulter computer source</p> <p>11 code for either the Delaware case or the Illinois</p> <p>12 case?</p> <p>13 MR. MALLIN: Objection, attorney-client</p> <p>14 communication, work product immunity.</p> <p>15 I'll instruct the witness not to answer.</p> <p>16 BY MR. FEIGELSON:</p> <p>17 Q. Mr. Horie, have you received emails related to this</p> <p>18 litigation from opposing counsel?</p> <p>19 A. I don't remember.</p> <p>20 Q. Are you part of a distribution list for the, for the</p> <p>21 Beckman Coulter-Sysmex litigations?</p> <p>22 MR. MALLIN: Objection, seeks</p> <p>23 attorney-client communication and attorney work</p> <p>24 product.</p> <p>25 I'll instruct the witness not to answer.</p>	<p style="text-align: right;">Page 32</p> <p>1 BY MR. FEIGELSON:</p> <p>2 Q. Mr. Horie, do you see the exhibit, DDX-0026?</p> <p>3 A. Yeah, I'm still reading it, sorry. It's a very long</p> <p>4 email chain.</p> <p>5 Q. Do you see your name on it as a recipient?</p> <p>6 A. My name?</p> <p>7 Q. Is your name there on the "To" line?</p> <p>8 A. Which page?</p> <p>9 Q. It's on the first page at the top, it says it's from</p> <p>10 Nicole Kopinski. Do you see that?</p> <p>11 A. First page, yes.</p> <p>12 Q. And it was sent Wednesday, August 5th, 2020?</p> <p>13 A. Yes.</p> <p>14 Q. At 4:49 in the morning, as Nicole sometimes does. Do</p> <p>15 you see that?</p> <p>16 A. Yes.</p> <p>17 Q. And then there's a "To" line. Do you see the "To"</p> <p>18 line?</p> <p>19 A. Mmm-hmm.</p> <p>20 Q. Is your name listed on the "To" line?</p> <p>21 A. No, I don't see my name.</p> <p>22 Q. Right. The names that are there are Andrea</p> <p>23 Shoffstall, right, she was an attorney at Brinks, is</p> <p>24 that correct?</p> <p>25 A. She was, yes.</p>
<p style="text-align: right;">Page 31</p> <p>1 MR. FEIGELSON: Travis, let's introduce</p> <p>2 DDX-A. You can move that over.</p> <p>3 VIDEO TECHNICIAN: All right, I'm moving it</p> <p>4 now, and do you want me to rename it with the new</p> <p>5 exhibit number?</p> <p>6 MR. FEIGELSON: Yes, please.</p> <p>7 VIDEO TECHNICIAN: Okay.</p> <p>8 MR. MALLIN: Would you let us know when</p> <p>9 it's in there?</p> <p>10 VIDEO TECHNICIAN: It's in there.</p> <p>11 MR. FEIGELSON: Travis, can you put that</p> <p>12 on -- there you go, thank you.</p> <p>13 MARKED FOR IDENTIFICATION:</p> <p>14 DEPOSITION EXHIBIT DDX-0026</p> <p>15 10:09 a.m.</p> <p>16 (Remotely introduced and provided</p> <p>17 electronically to the reporter)</p> <p>18 BY MR. FEIGELSON:</p> <p>19 Q. So that's being labeled now as DDX-0026, and it's an</p> <p>20 email from Nicole Kopinski. Do you see that,</p> <p>21 Mr. Horie?</p> <p>22 MR. MALLIN: Could you hold on? I'm having</p> <p>23 trouble with my Box account here a second, hold on.</p> <p>24 Okay, I've got it working now fine. Thank</p> <p>25 you.</p>	<p style="text-align: right;">Page 33</p> <p>1 Q. And then there's a BGLSysmex012Team. Do you see that?</p> <p>2 A. I can see that, yes.</p> <p>3 Q. And there's Kelly Farnan. Do you know who Kelly</p> <p>4 Farnan is?</p> <p>5 A. I think she's a local counsel.</p> <p>6 Q. In Delaware?</p> <p>7 A. Yes, I believe so.</p> <p>8 Q. And Renee Mosley Delcollo, do you know who she is?</p> <p>9 A. I don't know her.</p> <p>10 Q. But your name is not on the "To" line, correct?</p> <p>11 A. I don't see my name.</p> <p>12 Q. And it's also not on the "CC" line, correct?</p> <p>13 A. I don't see my name here, the "CC" line.</p> <p>14 Q. Does it appear that Ms. Kopinski intended for you to</p> <p>15 receive this email?</p> <p>16 MR. MALLIN: Objection, calls for</p> <p>17 speculation, calls for work product and mental</p> <p>18 impressions. If you --</p> <p>19 I'll instruct the witness not to answer to</p> <p>20 the extent it seeks work product immunity and/or</p> <p>21 attorney-client communication, and it seeks</p> <p>22 speculation.</p> <p>23 So you can answer if you don't provide work</p> <p>24 product immunity or attorney-client communication.</p> <p>25 A. I don't know, I don't recall.</p>

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<p style="text-align: right;">Page 50</p> <p>1 as this patent?</p> <p>2 MR. MALLIN: Same objection,</p> <p>3 attorney-client communication, work product immunity,</p> <p>4 and I'm going to instruct the witness not to answer.</p> <p>5 BY MR. FEIGELSON:</p> <p>6 Q. And you're following that instruction?</p> <p>7 A. Yes.</p> <p>8 Q. Mr. Horie, in the past two years, how many different</p> <p>9 Sysmex patent applications have you prosecuted?</p> <p>10 MR. MALLIN: One second here.</p> <p>11 Objection, attorney-client communication,</p> <p>12 and to the extent it also seeks work product immunity,</p> <p>13 I'm going to instruct the witness not to answer.</p> <p>14 BY MR. FEIGELSON:</p> <p>15 Q. How about in the past six months, Mr. Horie, how many</p> <p>16 Sysmex patent applications have you prosecuted? Is it</p> <p>17 more than ten?</p> <p>18 MR. MALLIN: Objection, attorney-client</p> <p>19 communication, and to the extent it seeks work product</p> <p>20 immunity, I'm going to instruct the witness not to</p> <p>21 answer.</p> <p>22 MR. FEIGELSON: Travis, can we put up</p> <p>23 DDX-C, as in cat?</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 52</p> <p>1 Travis.</p> <p>2 MARKED FOR IDENTIFICATION:</p> <p>3 DEPOSITION EXHIBIT DDX-0029</p> <p>4 10:44 a.m.</p> <p>5 (Remotely introduced and provided</p> <p>6 electronically to the reporter)</p> <p>7 BY MR. FEIGELSON:</p> <p>8 Q. And this is DDX-0029. It's a US published patent</p> <p>9 application, publication number US 2019/0285520,</p> <p>10 entitled "Sample Processing Method, Sample Processing</p> <p>11 Chip and Sample Processing Apparatus."</p> <p>12 Is that the document you have in front of</p> <p>13 you, Mr. Horie?</p> <p>14 A. Yes.</p> <p>15 MR. MALLIN: Only one page, correct?</p> <p>16 MR. FEIGELSON: This is the front page of</p> <p>17 that patent application, that is correct.</p> <p>18 BY MR. FEIGELSON:</p> <p>19 Q. And the applicant is Sysmex Corporation, right?</p> <p>20 A. Yes.</p> <p>21 Q. Do you recall filing an information disclosure</p> <p>22 statement for this application less than a month ago,</p> <p>23 on December 23rd of 2020?</p> <p>24 A. I don't recall, sorry.</p> <p>25 Q. It was about three weeks ago. You don't recall? Four</p>
<p style="text-align: right;">Page 51</p> <p>1 MARKED FOR IDENTIFICATION:</p> <p>2 DEPOSITION EXHIBIT DDX-0028</p> <p>3 10:43 a.m.</p> <p>4 (Remotely introduced and provided</p> <p>5 electronically to the reporter)</p> <p>6 MR. MALLIN: Which exhibit are we looking</p> <p>7 at now?</p> <p>8 MR. FEIGELSON: DDX-0028.</p> <p>9 MR. MALLIN: Okay. Is it just one page?</p> <p>10 MR. FEIGELSON: It's a single page.</p> <p>11 BY MR. FEIGELSON:</p> <p>12 Q. Mr. Horie, do you have that in front of you, DDX-0028?</p> <p>13 A. Yes.</p> <p>14 Q. And this is the first page of a published patent</p> <p>15 application for Sysmex Corporation for a blood</p> <p>16 analyzing method, blood analyzer, calibrator set, and</p> <p>17 calibrator set manufacturing method, correct?</p> <p>18 A. Are you reading the title?</p> <p>19 Q. Yes.</p> <p>20 A. Yeah. The title says that, yes.</p> <p>21 Q. And, in fact, Mr. Horie, do you recall filing an</p> <p>22 information disclosure statement in February of last</p> <p>23 year with respect to this application?</p> <p>24 A. I don't recall.</p> <p>25 MR. FEIGELSON: Let's go to Exhibit K,</p>	<p style="text-align: right;">Page 53</p> <p>1 weeks ago.</p> <p>2 A. You know, I've been fighting --</p> <p>3 MR. MALLIN: Just answer the question,</p> <p>4 okay?</p> <p>5 A. No, I don't recall, sorry.</p> <p>6 BY MR. FEIGELSON:</p> <p>7 Q. How did you obtain references for the, that were</p> <p>8 identified in information disclosure statements for</p> <p>9 Exhibits 29 and 28?</p> <p>10 MR. MALLIN: Objection, foundation.</p> <p>11 Objection, calls for attorney-client communication.</p> <p>12 I'll instruct the witness not to answer.</p> <p>13 BY MR. FEIGELSON:</p> <p>14 Q. Do you do your own searching for prior arts references</p> <p>15 to submit information disclosure statements,</p> <p>16 Mr. Horie?</p> <p>17 MR. MALLIN: Hold on one second.</p> <p>18 Objection to the extent it seeks</p> <p>19 attorney-client communication and work product</p> <p>20 immunity, including mental impression.</p> <p>21 I'll instruct the witness not to answer.</p> <p>22 BY MR. FEIGELSON:</p> <p>23 Q. You're following that instruction?</p> <p>24 A. Yes.</p> <p>25 Q. Mr. Horie, I can't remember your answer previously. I</p>

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<p style="text-align: right;">Page 54</p> <p>1 believe I asked you if you had viewed any Beckman 2 Coulter source code in the Illinois case or the 3 Delaware case. If I haven't asked that question 4 before, I'm asking it now. 5 Have you viewed any Beckman Coulter source 6 code, computer source code in the Illinois case or the 7 Delaware case? 8 MR. MALLIN: Hold on one moment. 9 MR. FEIGELSON: I'm sorry, are we waiting 10 on an answer? 11 COURT REPORTER: Yes. 12 MR. MALLIN: One moment, guys, one moment. 13 I'm going to object to that question to the 14 extent it seeks attorney-client communication, work 15 product immunity, and I'm going to instruct the 16 witness not to answer. 17 BY MR. FEIGELSON: 18 Q. And you're following that instruction, Mr. Horie? 19 A. Yes. 20 Q. You attempted to view Beckman Coulter source code, 21 isn't that correct? 22 MR. MALLIN: Objection, form, foundation. 23 BY MR. FEIGELSON: 24 Q. You can answer. 25 A. Sorry, what was the question?</p>	<p style="text-align: right;">Page 56</p> <p>1 (Off the record at 10:50 a.m.) 2 (Back on the record at 11:09 a.m.) 3 VIDEO TECHNICIAN: Back on the video 4 record. The time is now 1609 UTC. 5 Go ahead. 6 BY MR. FEIGELSON: 7 Q. Okay, before the break, Mr. Horie -- well, you know, 8 did you talk with counsel during this past break, in 9 the last fifteen minutes? 10 A. No. 11 Q. You didn't speak with counsel on your break? 12 A. No. 13 Q. What did you do in the last fifteen minutes during 14 your break? 15 A. I went to the bathroom, and walking around because of 16 my back issue. 17 Q. Okay. You didn't have any conversation with counsel? 18 A. No. 19 Q. Okay, great. Before the break I had asked Travis to 20 put up Exhibit M, and I think he's probably working on 21 that, but before that goes up, let me ask you, 22 Mr. Horie, do you recall making plans to accompany 23 Sysmex's expert to inspect Beckman Coulter's source 24 code in October of 2020? 25 A. Sorry, could you repeat that question again? Sorry, I</p>
<p style="text-align: right;">Page 55</p> <p>1 Q. Did you attempt to view Beckman Coulter source code? 2 A. You mean attempt? 3 Q. Yes. Did you make an effort to view Beckman Coulter 4 source code in this litigation? 5 MR. MALLIN: Objection to the extent it 6 calls for attorney-client communication and work 7 product immunity. 8 I'll instruct the witness not to answer. 9 BY MR. FEIGELSON: 10 Q. And you're following that instruction? 11 A. Yes. 12 MR. FEIGELSON: Let's put up Exhibit M, 13 please, as in Mary. 14 MR. MALLIN: Aaron, could we take a break 15 before we get into this exhibit, please? 16 MR. FEIGELSON: The exhibit is already up. 17 MR. MALLIN: I don't see it. 18 THE WITNESS: I don't see it, either. 19 MR. MALLIN: It's not in my folder yet. 20 MR. FEIGELSON: All right, we can take a 21 break. 22 MR. MALLIN: Okay, thanks. 23 VIDEO TECHNICIAN: Going off the video 24 record. The time is now 1550 UTC. 25</p>	<p style="text-align: right;">Page 57</p> <p>1 apologize. 2 Q. Yeah. You're aware that in the litigation between 3 Beckman Coulter and Sysmex, this case, that Sysmex's 4 expert had plans to inspect Beckman Coulter's source 5 code in October and that you were planning to 6 accompany him on that inspection? Do you recall that? 7 MR. MALLIN: Objection, foundation, and 8 form. 9 BY MR. FEIGELSON: 10 Q. You can answer the question. 11 A. Mmm-hmm, yeah-yeah. Somebody told me that, yes. Yes, 12 yeah. 13 Q. Okay. And those plans were canceled and you wound up 14 not accompanying the expert to inspect the Beckman 15 Coulter source code, is that right? 16 A. Yeah. That's true, yes. 17 Q. Do you know why the plans were canceled? 18 A. No. My answer is no. 19 Q. You don't know? All right. 20 MR. FEIGELSON: Let's bring up Exhibit M, 21 Travis. 22 MARKED FOR IDENTIFICATION: 23 DEPOSITION EXHIBIT DDX-0030 24 11:12 a.m. 25 (Remotely introduced and provided</p>

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<p style="text-align: right;">Page 58</p> <p>1 electronically to the reporter)</p> <p>2 BY MR. FEIGELSON:</p> <p>3 Q. So, Mr. Horie, while he's putting that up, you have no</p> <p>4 reason to think you shouldn't have been able to</p> <p>5 accompany Mr. Satish for the inspection of Beckman</p> <p>6 Coulter source code, is that correct?</p> <p>7 MR. MALLIN: Objection to the extent it</p> <p>8 calls for attorney-client communication and work</p> <p>9 product immunity.</p> <p>10 I'll instruct the witness not to answer.</p> <p>11 BY MR. FEIGELSON:</p> <p>12 Q. And you're following that instruction?</p> <p>13 A. Yes.</p> <p>14 Q. And so what we're looking at now is Exhibit 30,</p> <p>15 DDX-0030, and it appears to be an email chain. The</p> <p>16 most recent email at the top of the chain is from</p> <p>17 Joshua James. Do you see that?</p> <p>18 A. Hold on, please, sorry. My exhibit screen is not</p> <p>19 refreshing again.</p> <p>20 MR. MALLIN: Could you hold on for one</p> <p>21 second, guys? One moment.</p> <p>22 Sorry. Sorry about that. Go ahead.</p> <p>23 THE WITNESS: Travis, I'm not seeing the</p> <p>24 exhibit.</p> <p>25 VIDEO TECHNICIAN: It's Exhibit 30.</p>	<p style="text-align: right;">Page 60</p> <p>1 Mr. Satish instead. Regards, Josh.</p> <p>2 Correct, that's what it says?</p> <p>3 A. That's what it says, yes.</p> <p>4 Q. Were you planning to accompany Mr. Satish for a source</p> <p>5 code inspection?</p> <p>6 A. It's a long email chain.</p> <p>7 Q. I can direct your attention to the -- if you go to</p> <p>8 page, the bottom of page 2?</p> <p>9 A. Bottom of page 2.</p> <p>10 Q. I'm sorry, it's the bottom of page 1, going on to the</p> <p>11 top of page 2.</p> <p>12 A. Bottom of the email dated October 27th --</p> <p>13 Q. Yeah.</p> <p>14 A. -- 4:27 p.m.?</p> <p>15 Q. Just, you can look at this, yeah. At the bottom of</p> <p>16 page 2 Josh James wrote that: Tadashi Horie from</p> <p>17 Brinks Gilson &amp; Lione will be accompanying Mr. Satish,</p> <p>18 so please add him to your security list.</p> <p>19 Do you see that those are the last lines on</p> <p>20 page 2?</p> <p>21 A. Sorry, I like to confirm this is the right email. It</p> <p>22 says the date is October 27th, 2020, at 4:27 p.m. Is</p> <p>23 that the email that you are referring to?</p> <p>24 Q. Yes, it is.</p> <p>25 A. Okay, okay.</p>
<p style="text-align: right;">Page 59</p> <p>1 THE WITNESS: Oh, Exhibit 30, okay, sorry.</p> <p>2 BY MR. FEIGELSON:</p> <p>3 Q. Are you looking at that now, Mr. Horie?</p> <p>4 A. It's downloading. Yes, yes.</p> <p>5 Q. Okay. And it appears to be an email. The top chain</p> <p>6 and the first email on page 1 is from Joshua James.</p> <p>7 Do you see that?</p> <p>8 A. My name is here, yes.</p> <p>9 Q. Well, where do you see your name?</p> <p>10 A. Tadashi.</p> <p>11 Q. And that's in the content -- the subject -- the</p> <p>12 content of the email, right?</p> <p>13 A. Yeah.</p> <p>14 Q. And what is that? Can you read what Josh wrote in</p> <p>15 this email out loud?</p> <p>16 A. You want me to read?</p> <p>17 Q. Yeah, can you read that, please?</p> <p>18 A. The top of the email?</p> <p>19 Q. It's okay, I want to make sure you're reading that.</p> <p>20 Do you see that?</p> <p>21 A. Yup.</p> <p>22 Q. Okay, and Josh James is saying here on October 28th,</p> <p>23 he's writing to Aaron Feigelson, which is me, and he</p> <p>24 says: Aaron, due to your objection, Tadashi will not</p> <p>25 accompany Mr. Satish tomorrow. I will accompany</p>	<p style="text-align: right;">Page 61</p> <p>1 Q. And the last lines of that email at the bottom of</p> <p>2 page 2, Josh James writes that you were planning to</p> <p>3 accompany Mr. Satish on the source code inspection.</p> <p>4 Is that your understanding?</p> <p>5 A. That's what it says, yes.</p> <p>6 Q. Do you recall planning to accompany Mr. Satish on a</p> <p>7 source code inspection?</p> <p>8 A. Yeah, I recall somebody told me to go.</p> <p>9 Q. And you thought that that would be okay for you to do?</p> <p>10 MR. MALLIN: Objection, attorney-client</p> <p>11 communication, work product immunity.</p> <p>12 I'll instruct the witness not to answer.</p> <p>13 BY MR. FEIGELSON:</p> <p>14 Q. You're following that instruction?</p> <p>15 A. Yes.</p> <p>16 Q. At that time you didn't have any issue with going to</p> <p>17 view Beckman Coulter source code with Mr. Satish, is</p> <p>18 that right?</p> <p>19 MR. MALLIN: Objection, calls for</p> <p>20 attorney-client communication, work product immunity.</p> <p>21 I'll instruct the -- including mental</p> <p>22 impressions. I'll instruct the witness not to answer.</p> <p>23 BY MR. FEIGELSON:</p> <p>24 Q. But on October 28th and after, you were still</p> <p>25 prosecuting patent applications for Sysmex, isn't that</p>

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<p style="text-align: right;">Page 62</p> <p>1 right?</p> <p>2 MR. MALLIN: Objection, calls for</p> <p>3 attorney-client communication, work product immunity,</p> <p>4 vague.</p> <p>5 I'll instruct the witness not to answer.</p> <p>6 BY MR. FEIGELSON:</p> <p>7 Q. You're following counsel's instruction?</p> <p>8 A. Yes.</p> <p>9 Q. Mr. Horie, have you viewed any hard copy source code</p> <p>10 of Beckman Coulter for this litigation?</p> <p>11 MR. MALLIN: Hold on one second.</p> <p>12 Objection to the extent it calls for</p> <p>13 attorney-client communication and work product</p> <p>14 immunity, including mental impressions.</p> <p>15 I'll instruct the witness not to answer.</p> <p>16 BY MR. FEIGELSON:</p> <p>17 Q. You're following that instruction, Mr. Horie?</p> <p>18 A. Yes.</p> <p>19 Q. Okay.</p> <p>20 MR. FEIGELSON: Travis, can you put up</p> <p>21 Exhibit P, as in Paul.</p> <p>22 MARKED FOR IDENTIFICATION:</p> <p>23 DEPOSITION EXHIBIT DDX-0031</p> <p>24 11:19 a.m.</p> <p>25 (Remotely introduced and provided</p>	<p style="text-align: right;">Page 64</p> <p>1 page. That's a yes-or-no question.</p> <p>2 A. Before I answer the question, I'd like to review all</p> <p>3 of the pages and the drawings.</p> <p>4 Q. Okay. How long do you need to do that, Mr. Horie?</p> <p>5 A. Let me try. I will make it short.</p> <p>6 Q. Okay, I don't want to rush you, I just want to know</p> <p>7 how long you need.</p> <p>8 A. All right, okay, let me try.</p> <p>9 Yeah, the drawings, the drawings look</p> <p>10 familiar to me, yes.</p> <p>11 Q. The drawings look familiar to you?</p> <p>12 A. Yes.</p> <p>13 Q. But other than the drawings, you don't have a</p> <p>14 recollection of this 746 patent?</p> <p>15 A. Some of the text, yes, they are familiar to me.</p> <p>16 Q. Mr. Horie, are you aware that this patent was asserted</p> <p>17 by Sysmex against Beckman Coulter in 2018, in</p> <p>18 December?</p> <p>19 THE WITNESS: Is this the one?</p> <p>20 MR. MALLIN: If you're aware or not.</p> <p>21 THE WITNESS: Oh, okay.</p> <p>22 MR. MALLIN: Do you know or not.</p> <p>23 A. Yeah, I have to take a look at my note.</p> <p>24 BY MR. FEIGELSON:</p> <p>25 Q. Okay.</p>
<p style="text-align: right;">Page 63</p> <p>1 electronically to the reporter)</p> <p>2 MR. FEIGELSON: As he's putting it up, this</p> <p>3 will be DDX-0031, and it is a US patent number</p> <p>4 10,151,746.</p> <p>5 BY MR. FEIGELSON:</p> <p>6 Q. Are you looking at that now, Mr. Horie?</p> <p>7 A. The patent number is 10,151,746.</p> <p>8 Q. Yes. Do you recognize this patent?</p> <p>9 A. Do you want me to read through this?</p> <p>10 Q. I'm asking if you recognize it just from the front</p> <p>11 page.</p> <p>12 A. I'd like to see all of the, all of the pages.</p> <p>13 Q. Looking at the front page, you don't recognize this</p> <p>14 patent?</p> <p>15 A. Before I answer your question, I'd like to review all</p> <p>16 of the pages and the drawings.</p> <p>17 Q. I understand. My question is that you're not able to</p> <p>18 do that just by looking at the front page, is that</p> <p>19 your testimony?</p> <p>20 MR. MALLIN: He just said he wants to</p> <p>21 review the document. So why don't you give him the</p> <p>22 opportunity, Aaron, and provide that professional</p> <p>23 courtesy instead of badgering the witness, okay?</p> <p>24 BY MR. FEIGELSON:</p> <p>25 Q. I'm just asking if you recognize it from the front</p>	<p style="text-align: right;">Page 65</p> <p>1 A. At this moment, I can't answer your question because I</p> <p>2 don't remember.</p> <p>3 Q. Okay. Did you prosecute this patent application,</p> <p>4 Mr. Horie?</p> <p>5 A. I'd like to see my prosecution papers.</p> <p>6 Q. You don't know, as you sit here, whether you</p> <p>7 prosecuted this patent?</p> <p>8 A. I think I prosecuted this application, because --</p> <p>9 that's it, sorry.</p> <p>10 Q. Okay. If you notice on the front page, this</p> <p>11 application claims to be a continuation of another</p> <p>12 patent, patent number 9,933,414. Do you see that on</p> <p>13 the front page?</p> <p>14 A. That's line 63, right?</p> <p>15 Q. Correct.</p> <p>16 A. Okay, yes, yeah.</p> <p>17 Q. Did you prosecute that patent, 9,933,414, do you know?</p> <p>18 A. I don't remember.</p> <p>19 Q. And, in fact, if you were to turn the page, you would</p> <p>20 see that there are other patent applications in this</p> <p>21 chain going back to 2008.</p> <p>22 Did you prosecute any of those patent</p> <p>23 applications that are further up in the chain?</p> <p>24 MR. MALLIN: Objection, form.</p> <p>25</p>

# EXHIBIT P

**Redacted in its Entirety**

# EXHIBIT Q



**Redacted in its Entirety**

# EXHIBIT R

**Redacted in its Entirety**

# EXHIBIT S

**Redacted in its Entirety**

# EXHIBIT T

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01:12:40

## IN THE UNITED STATES DISTRICT COURT

## FOR THE DISTRICT OF DELAWARE

SYSMEX CORPORATION, et al., )  
 )  
 Plaintiffs, )  
 ) C.A. No. 19-1642 (RGA) (CJB)  
 v. )  
 )  
 BECKMAN COULTER, INC., )  
 )  
 Defendant. )

Tuesday, January 7, 2020  
 11:00 a.m.  
 Teleconference

844 King Street  
 Wilmington, Delaware

BEFORE: THE HONORABLE CHRISTOPHER J. BURKE  
 United States District Court Magistrate Judge

## APPEARANCES:

RICHARDS LAYTON & FINGER, PA  
 BY: KELLY E. FARNAN, ESQ.

-and-

BRINKS GILSON & LIONE  
 BY: JAMES R. SOBIERAJ, ESQ.

Counsel for the Plaintiffs

3

11:04:39 1 counsel if they would try to remember to identify themselves  
 11:04:41 2 each time they speak so that our court reporter can get a  
 11:04:44 3 good and accurate record of our call this morning.  
 11:04:47 4 Before we go further, let's have counsel for  
 11:04:49 5 each side identify themselves for the record. We'll start  
 11:04:52 6 first with counsel for the plaintiff's side, and we'll begin  
 11:04:54 7 there with Delaware counsel.  
 11:04:56 8 MS. FARNAN: Good morning, Your Honor. This is  
 11:04:58 9 Kelly Farnan from Richards, Layton & Finger on behalf of the  
 11:05:01 10 plaintiff. And I'm joined by Jim Sobieraj from Brinks  
 11:05:06 11 Gilson.  
 11:05:06 12 MR. SOBIERAJ: Good morning, Your Honor.  
 11:05:07 13 THE COURT: Good morning to you both.  
 11:05:08 14 We'll do the same for counsel for the  
 11:05:10 15 defendant's side, and again beginning with the Delaware  
 11:05:13 16 counsel.  
 11:05:15 17 MS. SHARP: Good morning, Your Honor. Melanie  
 11:05:17 18 Sharp from Young, Conaway on behalf of the defendants. With  
 11:05:21 19 me is Stephen Lee in our firm. Hopefully he'll be admitted  
 11:05:26 20 I think nine days from now in District Court. Also on the  
 11:05:29 21 line is Aaron Feigelson and Wesley Mueller from the Leydig  
 11:05:33 22 firm.  
 11:05:34 23 THE COURT: Okay.  
 11:05:35 24 MR. MUELLER: Good morning, Your Honor.  
 11:05:36 25 THE COURT: Good morning to you all. And

2

## 1 APPEARANCES CONTINUED:

2

3

YOUNG CONAWAY STARGATT & TAYLOR  
 BY: MELANIE K. SHARP, ESQ.

5

-and-

6

LEYDIG VOIT & MAYER, LTD  
 BY: WESLEY O. MUELLER, ESQ.  
 BY: AARON R. FEIGELSON, ESQ.

8

Counsel for the Defendant

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12

## PROCEEDINGS

13

(REPORTER'S NOTE: The following telephone  
 conference was held in chambers, beginning at 11:00 a.m.)

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11:02:57

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THE COURT: Good morning, everyone. It's Judge  
 Burke here. Before I begin let me just say a few things for  
 the record. The first is that we're here this morning for a  
 telephonic case management conference in the matter of  
 Sysmex Corp., et al. versus Beckman Coulter, Inc. It's  
 Civil Action Number 19-1642-RGA-CJB here in our court. And  
 because we are here on the record for our teleconference, I  
 have with me a court reporter, Mr. Hawkins, from our court  
 who will be taking down our call today. I would just ask

4

11:05:38 1 particularly good to welcome Mr. Lee to our bar.  
 11:05:41 2 So everyone as we begin our case management  
 11:05:45 3 conference today, let me just say a couple of things by way  
 11:05:49 4 of process and then we'll delve into the substance of the  
 11:05:53 5 parties' helpful letter that they sent in late December to  
 11:05:58 6 me.  
 11:05:58 7 So first, I'll just cover just briefly and  
 11:06:01 8 review my role in the case. As the parties know I have been  
 11:06:05 9 referred the case by the District Court to handle all issues  
 11:06:09 10 and motions up through case dispositive motions, so I'll do  
 11:06:13 11 that in the first instance. I also in these case management  
 11:06:17 12 conferences like to not only direct the parties to my  
 11:06:21 13 portion of the Court's website which has additional  
 11:06:24 14 information and orders relevant to my court on it, but also  
 11:06:29 15 because there the parties I always like to let them know  
 11:06:32 16 they will find a standing order that I have entered a couple  
 11:06:35 17 of years ago which relates to providing opportunities for  
 11:06:38 18 newer attorneys, that is attorneys who are seven years or  
 11:06:42 19 less out of law school, the opportunity to make argument  
 11:06:45 20 with regard to motions as to which oral argument has been  
 11:06:50 21 requested that are in front of me. And basically the  
 11:06:52 22 standing order simply provides some incentives for parties  
 11:06:56 23 to have newer attorneys who worked on those motions argue  
 11:06:59 24 them. For example, it says that if I'm told that a newer  
 11:07:02 25 attorney is going to argue a motion before me, I'll almost

11:07:06 **1** certainly decide then to grant oral argument and will  
 11:07:09 **2** consider doing things like allocating more time than they  
 11:07:13 **3** otherwise would have for the argument on the motion. So I  
 11:07:16 **4** just commend the parties particularly to that particular  
 11:07:18 **5** standing order. Again, it's on my portion of the District  
 11:07:21 **6** Court's website.  
 11:07:23 **7** Next let me talk a little bit about process in  
 11:07:26 **8** terms of getting a scheduling order up and running. We'll  
 11:07:29 **9** hear some arrangement on today's call about some of the  
 11:07:32 **10** disputed issues that the parties still have with regard to  
 11:07:35 **11** the schedule, then I'll make a decision on our call today.  
 11:07:37 **12** And what I'll do is I'll ask the plaintiff's counsel on  
 11:07:40 **13** behalf of all parties to file a revised proposed scheduling  
 11:07:45 **14** order that incorporates the decisions I've made and to do so  
 11:07:49 **15** by no later than close of business on Friday this week.  
 11:07:53 **16** That may require the parties to further meet and confer a  
 11:07:58 **17** bit, but I'll ask that a revised proposed schedule be filed  
 11:08:01 **18** by no later than the end of the week.  
 11:08:03 **19** All right. With all that said, I know the  
 11:08:06 **20** parties had some disputes with regard to the schedule. Let  
 11:08:11 **21** me first try to break down what I think are kind of the big  
 11:08:17 **22** buckets of dispute and make sure I have that correct before  
 11:08:20 **23** I tell you how we'll go about resolving the issues.  
 11:08:24 **24** It seemed to me that there were kind of at least  
 11:08:27 **25** three kind of significant buckets of disputes. The first is

11:08:31 **1** really just date related. The parties had a lot of disputes  
 11:08:34 **2** about dates which is really a larger dispute about how fast  
 11:08:38 **3** should we get to trial here, so that was kind of bucket  
 11:08:41 **4** number one. My inclination there is to hear some argument  
 11:08:46 **5** about why it is that the plaintiff's schedule or the  
 11:08:48 **6** defendant's schedule to trial makes more sense to each side,  
 11:08:52 **7** and then ultimately to make a decision today where I provide  
 11:08:55 **8** you with some key dates, that is the dates for the trial,  
 11:08:58 **9** the pretrial conference, the dates for hearing on case  
 11:09:01 **10** dispositive motions and the date for claim construction  
 11:09:04 **11** hearing. And then ask the parties to go back in light of my  
 11:09:07 **12** decisions on those dates and just craft a schedule that  
 11:09:11 **13** flows from those dates which hopefully won't be one where  
 11:09:14 **14** there is any further dispute.  
 11:09:15 **15** Next the parties had disputes about the case  
 11:09:18 **16** narrowing process. And then thirdly there were some  
 11:09:21 **17** disputes about how depositions should be handled in the  
 11:09:26 **18** case, all of which the parties had talked about in their  
 11:09:29 **19** letter.  
 11:09:29 **20** It seems like those were the three big buckets  
 11:09:32 **21** of issues.  
 11:09:32 **22** I'll turn first to plaintiff's counsel to let me  
 11:09:34 **23** know if they think I have missed anything that I would  
 11:09:37 **24** particularly need to decide here on our call today.  
 11:09:43 **25** MR. SOBIERAJ: James Sobieraj for the plaintiff,

11:09:46 **1** Your Honor. No, I think those are the key issues.  
 11:09:48 **2** THE COURT: Okay. And on defendant's side?  
 11:09:50 **3** MR. MUELLER: Your Honor, Wes Mueller. I  
 11:09:55 **4** believe those are the key issues with perhaps some other  
 11:09:58 **5** issues interrelated with those.  
 11:10:01 **6** THE COURT: Okay. Well, I'll kind of take them  
 11:10:04 **7** up in those -- we'll address those three buckets. And  
 11:10:07 **8** certainly, Mr. Mueller, if you think there are kind of  
 11:10:10 **9** related issues that we need to delve into as we do, just let  
 11:10:14 **10** me know.  
 11:10:14 **11** I will say as to those three buckets, one of  
 11:10:17 **12** them that I won't be getting into in our call today because  
 11:10:20 **13** I'm going to provide you with some more guidance is on the  
 11:10:24 **14** issue of case narrowing. Basically when parties, as the  
 11:10:27 **15** parties here have, have disputes about whether there should  
 11:10:30 **16** be a formal case narrowing order as it relates to asserted  
 11:10:35 **17** claims or invalidity positions, I have an additional order  
 11:10:41 **18** that I'll issue in the case that will provide you with some  
 11:10:44 **19** more specific guidance on what I would like the parties to  
 11:10:47 **20** do to really tee that issue up before me in a way that will  
 11:10:51 **21** be most helpful. In part it will provide you with some  
 11:10:55 **22** guidance as to some other cases in which I have issued  
 11:10:58 **23** opinions with regard to case narrowing. And I'll ask you  
 11:11:01 **24** for more specific arguments about whether we should narrow  
 11:11:05 **25** the case at all by way of court order and if so, whether

11:11:08 **1** there should be one cut down stage or two. And I'll provide  
 11:11:12 **2** you with some additional related guidance.  
 11:11:15 **3** So I don't plan to address the case narrowing  
 11:11:17 **4** issue substantially on our call today, but I'll issue a  
 11:11:22 **5** short order after our call that will ask the parties to  
 11:11:24 **6** provide me with some additional information and then I'll  
 11:11:28 **7** resolve the issue after I get that information.  
 11:11:31 **8** With that let me start first with the issue of  
 11:11:33 **9** the case schedule. And basically as the parties have  
 11:11:36 **10** helpfully set out in the timeline that's attached to Exhibit  
 11:11:39 **11** A in the beginning, the plaintiff is asking for a schedule  
 11:11:42 **12** that would get us to trial in November of 2021 and the  
 11:11:46 **13** defendant's side thinks that the trial should not occur  
 11:11:50 **14** until April of 2022. You talked a little bit about why in  
 11:11:54 **15** your respective letters. Let me give each side an  
 11:11:57 **16** opportunity to add anything they would like to add to the  
 11:12:00 **17** record in those respects. I'll turn first to counsel for  
 11:12:03 **18** plaintiff's side. Who is going to speak on behalf of the  
 11:12:06 **19** plaintiff here?  
 11:12:07 **20** MR. SOBIERAJ: Jim Sobieraj, Your Honor.  
 11:12:10 **21** THE COURT: Mr. Sobieraj, I certainly heard your  
 11:12:13 **22** arguments with regard to why you think some of the  
 11:12:16 **23** efficiencies that could be gained in light of the fact that  
 11:12:19 **24** the Illinois litigation means that this case should kind of  
 11:12:23 **25** go on a relatively typical schedule. And obviously the



11:12:27 **1** other side has pointed to some of the complications that can  
 11:12:32 **2** come along with litigation involving Japanese corporations  
 11:12:37 **3** and entities. And I wanted to get your take on why it is  
 11:12:42 **4** that those kinds of complications when you factor them in  
 11:12:47 **5** even in light of the efficiency gains from the Illinois case  
 11:12:51 **6** don't suggest that maybe a little bit more time is needed  
 11:12:54 **7** than normal.  
 11:12:55 **8** MR. SOBIERAJ: Sure, Your Honor. We filed this  
 11:12:57 **9** case in September, early September of 2019. And we're  
 11:13:00 **10** proposing a trial in November of 2021 which is a 26-month  
 11:13:06 **11** schedule which based on my experience in Delaware is pretty  
 11:13:10 **12** typical. And I don't really think that the presence of the  
 11:13:15 **13** Japanese corporations presents any exceptional circumstances  
 11:13:19 **14** that merits additional time, particularly with the  
 11:13:24 **15** efficiencies we've already gained because a lot of discovery  
 11:13:29 **16** in the Illinois case is going to be used here.  
 11:13:31 **17** I expect the document production in this case is  
 11:13:34 **18** going to be less than what we already produced in the  
 11:13:37 **19** Illinois case, so the parties have already been dealing with  
 11:13:40 **20** and resolving working with machine translations and other  
 11:13:44 **21** ways to deal with the issues relating to the Japanese  
 11:13:49 **22** defendants.  
 11:13:49 **23** The other thing, a couple other points I can  
 11:13:53 **24** make that there are some things that have developed since we  
 11:13:56 **25** sent our letter. In our schedule we proposed that the

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11:14:00 **1** plaintiffs identify the accused products in the patents by  
 11:14:05 **2** Monday, December 30th. And we did that. We went ahead and  
 11:14:08 **3** met that deadline. Also, both parties have already served  
 11:14:12 **4** written discovery, so discovery is underway in this case.  
 11:14:16 **5** I would also like to point out I think there is  
 11:14:20 **6** a few anomalies in the schedule that the defendants have  
 11:14:24 **7** proposed. So they start adding additional time early on,  
 11:14:28 **8** but for example, they want two additional weeks for the core  
 11:14:32 **9** documents which again, I'm not sure there is anything  
 11:14:35 **10** exceptional that needs an additional two weeks, especially  
 11:14:40 **11** since we already met our deadline of identifying the accused  
 11:14:45 **12** product.  
 11:14:45 **13** But then after production of core products, both  
 11:14:48 **14** sides proposed roughly one month for the plaintiff to  
 11:14:51 **15** produce initial claim charts. And then we propose an  
 11:14:56 **16** additional thirty days and then thirty days later the  
 11:14:58 **17** defendants would produce their invalidity contentions. The  
 11:15:02 **18** defendants propose an additional thirty days, so they're  
 11:15:06 **19** proposing thirty days for infringement contentions, but they  
 11:15:10 **20** want sixty days for their invalidity contentions and they  
 11:15:14 **21** want it to go to May 15th. The other thing that's anomalous  
 11:15:19 **22** about that is they indicated that they plan to file an inter  
 11:15:25 **23** parties' review petition by the end of March, so if they do  
 11:15:28 **24** that, I don't understand why they then need an additional  
 11:15:32 **25** six weeks to serve their invalidity contentions.

11:15:35 **1** The other thing I think the Court might be  
 11:15:38 **2** interested in knowing is that there is a European  
 11:15:42 **3** counterpart to these patents. And some time ago, the  
 11:15:47 **4** defendants filed an opposition to basically challenge the  
 11:15:53 **5** invalidity of the claims of the counterpart European  
 11:15:56 **6** application in the European Patent Office. So they're well  
 11:16:00 **7** familiar with the subject matter and the specification of  
 11:16:04 **8** the patents. They're familiar with the prior art already  
 11:16:08 **9** based on what they've done in the European Patent Office.  
 11:16:11 **10** The claims may not be identical, but again, it's not like  
 11:16:16 **11** they're starting from scratch. They have quite a head start  
 11:16:19 **12** already in terms of developing prior art defenses in this  
 11:16:23 **13** case.  
 11:16:24 **14** The other anomaly I noticed in their proposed  
 11:16:30 **15** schedule is when we get to dispositive motions, it has a  
 11:16:34 **16** different starting dates. But plaintiffs have proposed  
 11:16:37 **17** after dispositive motions are filed usually by the  
 11:16:40 **18** defendants that the other idea would have twenty days to  
 11:16:43 **19** file a responsive brief and fourteen days to file a reply  
 11:16:47 **20** brief.  
 11:16:48 **21** Defendants have proposed that after dispositive  
 11:16:51 **22** motions are filed, the responding party would have only  
 11:16:55 **23** eighteen days for a response, but then the party filing the  
 11:16:58 **24** dispositive motions would have twenty-one days for reply.  
 11:17:02 **25** It doesn't make sense to have any symmetry. Usually you get

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11:17:05 **1** more time for the responsive brief than the reply brief.  
 11:17:10 **2** So I think those are the additional points that  
 11:17:11 **3** I wanted to make in addition to what we said in our letter.  
 11:17:14 **4** THE COURT: Certainly I agree with you that the  
 11:17:16 **5** general pace of your schedule roughly, not quite, but almost  
 11:17:20 **6** twenty-four months to trial from today, initial disclosures  
 11:17:24 **7** that are roughly thirty days apart seem more in line with  
 11:17:27 **8** quote unquote the typical patent case schedule in a few  
 11:17:33 **9** patent cases or a case like it, but I guess in terms of the  
 11:17:38 **10** question of should this case be typical or not or do we move  
 11:17:42 **11** more efficiently or will it be less efficient, obviously you  
 11:17:49 **12** have said that you think there is going to be efficiency  
 11:17:52 **13** gains from significant discovery already having been  
 11:17:55 **14** produced in Illinois and being shared here. Obviously the  
 11:17:58 **15** other side has pointed to the fact that your patents are at  
 11:18:01 **16** issue in this case, there is obviously going to be new  
 11:18:05 **17** inventorship testimony, there is going to be new and  
 11:18:09 **18** different issues at play here, of course, but if you were  
 11:18:12 **19** going to put a finer point on the efficiency argument and  
 11:18:17 **20** say judge, look, as opposed to a typical case that is  
 11:18:21 **21** starting from scratch, this case should move X amount  
 11:18:25 **22** efficiently because we have already largely dealt with  
 11:18:30 **23** production of these sub issues. What would you say to put a  
 11:18:34 **24** finer point on that?  
 11:18:35 **25** MR. SOBIERAJ: I would say probably two months

11:18:37 1 sooner. I can give you a little more detail, too, Your  
 11:18:40 2 Honor. So the accused products in this case, there has been  
 11:18:43 3 quite a bit of discovery on them in the Illinois case. So,  
 11:18:46 4 for example, in the Illinois case, the plaintiffs are  
 11:18:48 5 arguing that the accused products in this case are evidence  
 11:18:51 6 of commercial success of their patents in the Illinois case.  
 11:18:54 7 THE COURT: The accused products in this case  
 11:18:58 8 are said to read on the patents-in-suit in Illinois?  
 11:19:01 9 MR. SOBIERAJ: Yeah, that's their position.  
 11:19:03 10 Their position that the Illinois patents, let's call them  
 11:19:06 11 the Illinois patents, read on the accused products in this  
 11:19:09 12 case as evidence of commercial success of the patents in the  
 11:19:12 13 Illinois case. So a lot of the information has been  
 11:19:16 14 produced. In depositions we have asked questions of some of  
 11:19:20 15 their witnesses about the accused products. Now, there is  
 11:19:23 16 some different functionality at issue here, but there has  
 11:19:28 17 already been some discovery taken that is useful in this  
 11:19:32 18 case. And even though in this case there is four Japanese  
 11:19:37 19 inventors, three of them were deposed in the Illinois case.  
 11:19:41 20 Now, different patents, there are some different  
 11:19:44 21 functionality, but they have already gone through the  
 11:19:46 22 background questions for all these inventors and found out  
 11:19:50 23 their employment history, different projects they worked on,  
 11:19:55 24 so that's ground that doesn't need to be covered again when  
 11:19:58 25 they're deposed again in this case.

11:19:59 1 THE COURT: Okay. Let me turn to your colleague  
 11:20:01 2 on the other side. Who is going to speak on behalf of the  
 11:20:04 3 defendant on these issues?  
 11:20:06 4 MR. MUELLER: Thank you, Your Honor. Wes  
 11:20:08 5 Mueller on behalf of defendants.  
 11:20:11 6 THE COURT: Mr. Mueller, let me start with a  
 11:20:14 7 question for you which is just on the general efficiency  
 11:20:16 8 points, I think Mr. Sobieraj would say look, at a minimum  
 11:20:20 9 we're not starting at scratch here. These are parties well  
 11:20:23 10 familiar with each other. There is going to be some amount  
 11:20:25 11 of discovery that will have happened in the prior case that  
 11:20:29 12 can be streamlined a bit here. Obviously there will be  
 11:20:34 13 differences. If you factor that in, I think the plaintiff's  
 11:20:39 14 point would be even if there are additional challenges here  
 11:20:43 15 because we have some foreign entities and foreign witnesses,  
 11:20:48 16 it should roughly even out in terms of the typical case  
 11:20:52 17 schedule. Obviously you disagree. I'm happy to hear your  
 11:20:56 18 view on why that is.  
 11:20:58 19 MR. MUELLER: Thank you, Your Honor.  
 11:20:59 20 So while there is some overlap with respect to  
 11:21:03 21 the accused products which are BCI hematology analyzers,  
 11:21:11 22 those documents are all in English and understanding what  
 11:21:16 23 they mean is straightforward. On the flip side, the  
 11:21:22 24 discovery for which we are most interested in which is the  
 11:21:27 25 development of both the patented product or the development

11:21:34 1 that led to the patents-in-suit, and these patents date back  
 11:21:41 2 more than ten years ago, the technology that was allegedly  
 11:21:45 3 developed in the 2007, 2008 time frame, that is all in  
 11:21:51 4 Japanese. That was all done overseas and the documentation  
 11:21:56 5 that is difficult at best to get in the first instance  
 11:22:01 6 because there is always a question as to, or there has been  
 11:22:05 7 a question at least as it has arisen in the Illinois case as  
 11:22:10 8 to what the relevant scope of documents might be, but then  
 11:22:15 9 once the documents are produced to understand what they  
 11:22:18 10 mean.  
 11:22:18 11 So in this case, both BCI and Sysmex have  
 11:22:26 12 developed a hematology analyzer product with multimode  
 11:22:32 13 detectors as is set forth in their patents which measures  
 11:22:35 14 both blood and body fluid long before Sysmex applied for  
 11:22:42 15 these patents-in-suit. So we know that Sysmex had prior art  
 11:22:46 16 machines which used both blood and body fluid. In fact,  
 11:22:54 17 they had a software application that was used on their prior  
 11:22:57 18 art machine and we need to know what that is, and we need to  
 11:23:00 19 understand what that is in order to develop our prior art  
 11:23:04 20 defense.  
 11:23:05 21 And so while my friend talks about how we have a  
 11:23:12 22 good understanding of the prior art with respect to even  
 11:23:14 23 these patents because there is a European opposition that's  
 11:23:18 24 going on, we do have an understanding of prior art which is  
 11:23:23 25 by way of printed publication. But there is another body of

11:23:28 1 prior art that we think is highly relevant in this instance  
 11:23:33 2 and that is an understanding of how machines which were sold  
 11:23:37 3 throughout the world by Sysmex which included both blood and  
 11:23:43 4 body fluid, how they operated. And that is a lot more  
 11:23:48 5 detailed into, you know, how the software was executing,  
 11:23:51 6 what the screen displays looked like, and that's why we  
 11:23:57 7 proposed some additional time on the front end to not only  
 11:24:02 8 get the documents in the door, but because from our  
 11:24:07 9 experience in the Illinois litigation, we fully believe that  
 11:24:11 10 all these documents will be in Japanese. It's going to take  
 11:24:15 11 us additional time to understand what those documents mean.  
 11:24:19 12 THE COURT: Okay. So I guess, Mr. Mueller, if I  
 11:24:23 13 was summing up what you said, is this correct that you think  
 11:24:26 14 there will be some substantial number of 102, 103 related  
 11:24:34 15 docs and other docs in the case that are likely to be  
 11:24:37 16 produced by plaintiff's side or which you will have to seek  
 11:24:40 17 that are likely to come from Japan, be in Japanese in terms  
 11:24:46 18 of their native language, and that is going to create  
 11:24:50 19 difficulties for you for which you're going to need more  
 11:24:54 20 than the typical additional time particularly in the early  
 11:24:58 21 stages of the case; is that right?  
 11:25:00 22 MR. MUELLER: That's correct, Your Honor. And  
 11:25:03 23 what we've experienced is that just the cultural differences  
 11:25:09 24 between U.S. corporations which are perhaps more accustomed  
 11:25:14 25 to discovery disputes in the U.S. and those of Sysmex, in

11:44:30 **1** use it at trial, so it seems to me it's reasonable and most  
 11:44:34 **2** cost effective for them to provide a translation at the time  
 11:44:38 **3** they're offering the document to show to the witness.  
 11:44:40 **4** THE COURT: All right. Anything further besides  
 11:44:43 **5** that issue?  
 11:44:49 **6** MR. SOBIERAJ: Not from our side. Thank you.  
 11:44:51 **7** THE COURT: Mr. Mueller, anything you want to  
 11:44:53 **8** say about the document translation issue? And also, was  
 11:44:56 **9** there any other issue that we haven't covered that you think  
 11:44:58 **10** I need to decide?  
 11:45:00 **11** MR. MUELLER: Well, obviously I mean on the  
 11:45:03 **12** document translation issue, if they want a certified copy of  
 11:45:08 **13** documents that we may or may not show a witness prior to the  
 11:45:13 **14** deposition, that's revealing our strategy and work product  
 11:45:19 **15** prior to the deposition. And if they have a translation, it  
 11:45:25 **16** ought to be going the other way I guess is my point that  
 11:45:30 **17** they've got the ability to understand the documents that  
 11:45:32 **18** they're producing in both English and Japanese, and we would  
 11:45:38 **19** all be on equal footing if the documents were produced to us  
 11:45:43 **20** in the first instance and in English. They must have a  
 11:45:47 **21** translation in order to know what they're producing.  
 11:45:50 **22** THE COURT: I was just going to ask,  
 11:45:52 **23** Mr. Mueller, to short circuit it, if you're taking the depo  
 11:45:56 **24** in this case and let's say you are going to ask a witness  
 11:45:58 **25** about a document that's in Japanese, I mean, is your plan to

11:46:02 **1** ask the witness about the document but to not have or  
 11:46:09 **2** produce a translated copy to the plaintiff or is what you're  
 11:46:12 **3** saying look, if we do that, yeah, I'm sure we're going to  
 11:46:16 **4** have a translation and if we have a translation I'm sure  
 11:46:19 **5** we're going to give it to the other side just out of  
 11:46:22 **6** courtesy, are you saying one or the other or something in  
 11:46:26 **7** between?  
 11:46:26 **8** MR. MUELLER: What we're saying is if we have a  
 11:46:28 **9** translation, whether it's certified, it may not be  
 11:46:33 **10** certified, but if we have a translation such as a machine  
 11:46:36 **11** translation, we would provide it to the other side. But if  
 11:46:42 **12** they have a translation, which they must or else it's  
 11:46:46 **13** unclear how they would be producing these documents and how  
 11:46:49 **14** they would understand the relevance of the documents, they  
 11:46:53 **15** ought to be producing translations to us in the first  
 11:46:57 **16** instance.  
 11:46:57 **17** THE COURT: Okay. Anything further,  
 11:47:01 **18** Mr. Mueller, in terms of issues that we haven't addressed  
 11:47:04 **19** that I need to make a decision on?  
 11:47:06 **20** MR. MUELLER: Not that you need to make a  
 11:47:07 **21** decision on. We do intend as counsel indicated, BCI does  
 11:47:14 **22** intend to file petitions for IPR on these patents. And  
 11:47:18 **23** there is nothing to act on at this point, but we want to be  
 11:47:23 **24** sure that Your Honor is aware that we intend to go forward  
 11:47:27 **25** with those.

11:47:27 **1** THE COURT: And that's helpful because the other  
 11:47:30 **2** issue I sometimes ask is there any other issue about the  
 11:47:33 **3** case that we haven't talked about in terms of the schedule  
 11:47:37 **4** that either side wants to make me aware of. I appreciate  
 11:47:41 **5** you making me aware of the IPR. Do you happen to know what  
 11:47:46 **6** the statutory deadline is for filing?  
 11:47:48 **7** MR. MUELLER: Well, it would be September of  
 11:47:51 **8** 2020, but we intend to get it on file much before that.  
 11:47:57 **9** THE COURT: Okay. And Mr. Sobieraj, is there  
 11:48:00 **10** anything else along those lines, maybe not to do with the  
 11:48:03 **11** scheduling order itself, but another issue that's unique to  
 11:48:07 **12** the case that you wanted to bring to the Court's attention?  
 11:48:11 **13** Not that there has to be, but if there is, I'm happy to give  
 11:48:15 **14** you the opportunity to mention it.  
 11:48:16 **15** MR. SOBIERAJ: No, there is not, Your Honor.  
 11:48:17 **16** I'm not inclined to make one up.  
 11:48:19 **17** THE COURT: Good. We've gotten into the weeds  
 11:48:21 **18** certainly quite a bit about some other issues here. Let me  
 11:48:25 **19** go ahead and give you my decisions on the issues that I have  
 11:48:28 **20** written down that the parties have addressed. What I'll ask  
 11:48:31 **21** is that the parties after I give my decisions today, that  
 11:48:38 **22** they further meet and confer in an attempt to provide me  
 11:48:41 **23** with a revised proposed scheduling order by no later than  
 11:48:46 **24** close of business on Friday of this week that is free of  
 11:48:49 **25** dispute. I'm going to address as I said the dispute about

11:48:52 **1** the dates by providing you with some key dates, and I'm  
 11:48:59 **2** hopeful that that will enable the parties after further  
 11:49:04 **3** meeting and conferring to agree on a schedule that is  
 11:49:06 **4** aligned with those dates and that makes sense, and also  
 11:49:10 **5** address the other disputed issues as I understand them that  
 11:49:14 **6** the parties have raised.  
 11:49:15 **7** First with regard to the general case schedule,  
 11:49:17 **8** after hearing the parties' arguments, I'm going to order  
 11:49:20 **9** that the jury trial in the case begin on a date that is much  
 11:49:27 **10** closer to the plaintiff's proposal here, slightly later than  
 11:49:31 **11** what they were proposing, but closer to their proposal than  
 11:49:34 **12** the defendant's side. I understand that there may be some  
 11:49:37 **13** greater than normal complications in the case because we are  
 11:49:41 **14** going to have Japanese language documents and Japanese  
 11:49:46 **15** witnesses. On the other hand it does strike me that in  
 11:49:51 **16** light of the other litigation in Federal Court in Illinois  
 11:49:55 **17** that there really should be efficiencies that should be  
 11:50:00 **18** gained in this case that you wouldn't have a in typical  
 11:50:02 **19** patent case as well. And it's not clear to me sitting here  
 11:50:05 **20** today that they won't in essence shake out evenly in the  
 11:50:10 **21** end, if they might provide some additional hurdles for  
 11:50:14 **22** defendants in the earlier part of the case. I think we can  
 11:50:17 **23** get to trial roughly two years from today's date as we would  
 11:50:20 **24** in a two patent case in our district when you kind of equal  
 11:50:24 **25** out those respective difficulties and efficiencies. I'm